SUPREME COURT, U. S.

FILED

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Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-761

ALVA OWEN HAWKINS, PETITIONER,

versus

HONORABLE JOSEPH R. MOSS, CHIEF JUSTICE, HONORABLE J. WOODROW LEWIS, ASSOCIATE JUSTICE, HONORABLE THOMAS P. BUSSEY, ASSOCIATE JUSTICE, HONORABLE JAMES M. BRAILSFORD, ASSOCIATE JUSTICE, HONORABLE C. BRUCE LITTLEJOHN, ASSOCIATE JUSTICE, INDIVIDUALLY AND AS THE SUPREME COURT OF SOUTH CAROLINA, AND THEIR SUCCESSORS; FRANCES H. SMITH, INDIVIDUALLY AND AS CLERK OF THE SUPREME COURT OF SOUTH CAROLINA, AND HER SUCCESSOR, AND CHARLES W. KNOWLTON, JOHN B. THOMAS, WARREN DERRICK, REMBERT D. PARLER AND J. WILLIAM BRADFORD, INDIVIDUALLY AND AS MEMBERS OF THE COMMITTEE ON CHARACTER AND FITNESS OF THE SOUTH CAROLINA BAR, AND THEIR SUCCESSORS, RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (Appendix of Petition at 1-a) is reported at 503 F. (2d) 1171. The opinion of the District Court is unreported and is set out in Appendix of Petition at 30a.

JURISDICTION

Respondents do not question the Court's jurisdiction in this proceeding.

QUESTIONS PRESENTED

I

Whether or not South Carolina's former Rule 10, which allowed attorneys coming from other states to be admitted to the South Carolina Bar without examination only if the state from which the attorney came extended reciprocity, made a rational classification to serve a legitimate state interest and thus did not violate the due process or equal protection clauses of the fourteenth amendment?

II

Whether or not former Rule 10 imposed invalid conditions on Petitioner's right to travel?

STATEMENT

Petitioner instituted this action in March of 1972, seeking to have Rule 10 of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina declared unconstitutional and, *inter alia,* to compel the Committee on Character and Fitness of the South Carolina Bar to consider his application without reference to the reciprocity clause of Rule 10. The rule, promulgated by the Supreme Court of South Carolina and now repealed by that body,[1] contained various provisions as to age, character, length of prior continuous practice and residency. It further provided as follows:

> Attorneys from states not extending reciprocity on substantially equal terms to attorneys licensed in this State shall not be admitted under this Rule.

[1] The rule was repealed on January 3, 1972, effective April 1, 1972. The effect of the repeal is to require every applicant to take the bar examination.

Petitioner was admitted to practice in New Jersey in 1934. Upon his retirement from a Federal Civil Service position, he moved to South Carolina, where, in September of 1971, he mailed an application for admission to the Bar by motion to the Clerk of the Supreme Court of South Carolina.[2] Accompanying the application was a letter indicating Petitioner's view that the reciprocity provision was unconstitutional. The application was insufficient in various respects aside from the reciprocity provision and was returned. The application was again sent to the Clerk in November or December of 1971. This time the Clerk returned it and the $150.00 fee on December 9, 1971, stating that the Court denied the Petitioner's request to relax the reciprocity provision.[3]

In the lower courts, Petitioner contended that the reciprocity provisions of Rule 10 violated the due process and equal protection clauses of the fourteenth amendment as well as the privileges and immunities clauses of Art. IV, § 2 and of the fourteenth amendment.

On March 21, 1973, the District Court entered an order holding that Petitioner's claim failed to raise a question of sufficient constitutional dimensions to require the convening of a three-judge court, and dismissed the action on the

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[2] Interestingly enough, especially in view of the contention that "the right to practice one's profession [is] close to being a necessity of life" (Pet. Br. at 12), the Petitioner moved to South Carolina in 1969 and had lived there for two years prior to seeking admission to the Bar.

Rule 10 additionally required that an attorney applicant be "actually engaged" in the practice of law for five years preceding his application. The Court of Appeals noted (503 F. (2d) 1171, 1175, n. 4) that this factual issue has not been resolved. Petitioner obviously practiced no law in South Carolina in 1969, 1970, or 1971, but claims that he maintained desk space in a New Jersey law office during those years, even though he resided in South Carolina and made only sporadic visits to New Jersey. The result is that Petitioner's standing to maintain this action rests on a shaky factual foundation; *Cf. O'Shea v. Littleton*, 414 U. S. 488 (1974).

[3] Another serious factual issue exists as to whether Petitioner actually submitted an application (in which case the fee would have been nonreturnable), or whether he intended that his application be submitted only if he could persuade the Court to relax or amend Rule 10.

merits. The Court of Appeals, reviewing only the holding that former Rule 10 was valid as applied to Petitioner (503 F. (2d) 1171, 1175, n. 3), affirmed. This Petition followed.

ARGUMENT

I

South Carolina's former Rule 10, which allowed attorneys coming from other states to be admitted to the South Carolina Bar without examination only if the state from which the attorney came extended reciprocity, made a rational classification to serve a legitimate state interest and did not violate the due process or equal protection clauses of the fourteenth amendment.

The question here is whether this state measure bears a rational relation to a constitutionally permissible objective. As the Court of Appeals held (503 F. (2d) at 1175, n. 3), citing *Lombardi v. Tauro*, 470 F. (2d) 798 (1st Cir. 1972), a state need not show a "compelling state interest" in order to impose conditions on one's pursuit of his chosen profession. In numerous cases, this Court has applied the standard test not only in cases dealing with regulation of jobs or professions (*e.g., Williamson v. Lee Optical of Oklahoma*, 348 U. S. 483 (1955)), but also in cases where the regulations in question effectively precluded some qualified persons from entering a calling at all. *E.g., Kotch v. River Pilot Commissioners*, 330 U. S. 552 (1947).

The Court of Appeals, sustaining the validity of Rule 10, held:

> State reciprocity statutes or regulations such as Rule 10 are not unusual. In fact, they have been adopted by the vast majority of the states and apply particularly in the field of professional licensing. They represent a state's undertaking to secure for its citizens an advantage by offering that advantage to citi-

> zens of any other state on condition that the other state make a similar grant. To secure for her citizens the reciprocal rights and advantages obtained under such statutes or rules is manifestly a legitimate interest and goal on the part of a state just as it is a legitimate interest of one nation to secure reciprocal property rights for its citizens in other nations. . . . It is a familiar rule of constitutional law that a statute or rule promulgated under state authority will be found to violate equal protection only when it results in discrimination against a certain class and the classification is not rationally related to any legitimate state policy or interest. 503 F. (2d) at 1176-7 (footnotes and citations omitted).

The constitutional validity of such a rule is further shown by the unanimity of the cases so holding. *See, e.g., Fales v. Commission on Licensure to Prac. Heal. Art.*, 275 A. (2d) 238 (D. C. Ct. App. 1971); *O'Dell v. Ohio State Medical Board*, 22 Ohio Misc. 138, 259 N. E. (2d) 167 (1970); *Mercer v. Hemmings*, 194 So. (2d) 579 (Fla. App. 1967).

Finally, Chief Justice Burger, dissenting in *In Re Griffeths*, 413 U. S .717, 733 (1973), stated that:

> [T]he States may well move to adopt, by statute or rule of court, a reciprocal proviso, familiar in other contexts; under such a reciprocal treatment of applicants a State would admit to the practice of law the nationals of such other countries as admit American citizens to practice. I find nothing in the core holding of *Zschering v. Miller*, 389 U. S. 429 (1968) to foreclose state adoption of such reciprocal provisions. See *Clark v. Allen*, 331 U. S. 503 (1947).

Nor, it might be added, was there anything in the core holding of *Griffeths* itself to foreclose this course of action by the states.

II

Former Rule 10 imposed no invalid conditions on Petitioner's right to travel.

In all the cases cited by Petitioner dealing with the right to travel, the persons adversely affected by a state or local statutory provision had no alternative, when they travelled to the state, other than to do without that which the Court ultimately deemed them to be entitled to. *See, Shapiro v. Thompson,* 394 U. S. 618 (1969) (one-year residence requirements for welfare benefits); *Dunn v. Blumstein,* 405 U. S. 330 (1972) (durational residence requirements for voting); *Memorial Hospital v. Maricopa County,* 415 U. S. 250 (1974) (one-year residence requirement for free non-emergency medical care). Petitioner, the last person allegedly affected by Former Rule 10,[4] has an alternative, that of taking the bar examination; unlike the persons adversely affected in the aforementioned cases, this alternative does not require the passage of time, but instead is well within Petitioner's power to control. His claim of an adverse effect on his right to travel must be judged accordingly.

In addition, the "right to travel" cases cited above were grounded in the equal protection clause of the fourteenth amendment. The constitutionality of Rule 10 in that respect has already been discussed. Further, the Court of Appeals has succinctly pointed out the inapplicability of the privileges and immunities clause of Art. IV, § 2:

> So long, then, as the State does not subject the migrant attorney, seeking the right to practice in the State, to no more onerous requirements than those imposed on its citizens seeking such right, it cannot be said that

[4] An analogous case in this respect was *Rice v. Sioux City Cemetery,* 349 U. S. 70 (1954) where a writ of certiorari was dismissed and an affirmance by an equally divided court was vacated when it was discovered that the state in question had enacted a statute which would prevent the situation from arising again.

the State has violated the section. 503 F. (2d) at 1179-80.

Respondents respectfully contend that this is not a case wherein the Petitioner was subjected to an undue condition when he exercised his right to travel; therefore, the Court should not issue a Writ of Certiorari to review the decree of the Court of Appeals in this action.

CONCLUSION

For the foregoing reasons, Respondents submit that Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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